

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARVIN WALLACE,

Plaintiff,

v.

G. MARTIN, *et al.*,

Defendants.

Case No. 3:22-cv-00180-MMD-CSD

ORDER

Pro se Plaintiff Marvin Wallace brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 6.) On August 9, 2022, this Court ordered Wallace to file an amended complaint by September 8, 2022. (ECF No. 5 at 7.) The Court warned Wallace that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.*) That deadline expired, and Wallace did not file an amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets, and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
2 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Wallace's
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing
9 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
13 be used to correct the party's failure that brought about the Court's need to consider
14 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
15 that considering less drastic alternatives *before* the party has disobeyed a court order
16 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
17 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
18 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
19 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
20 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
21 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
22 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
24 unless Wallace files an amended complaint, the only alternative is to enter a second order
25 setting another deadline. But the reality of repeating an ignored order is that it often only
26 delays the inevitable and squanders the Court's finite resources. The circumstances here
27 do not indicate that this case will be an exception: there is no hint that Wallace needs
28 additional time or evidence that he did not receive the Court's screening order. Setting

1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 Having thoroughly considered these dismissal factors, the Court finds that they
4 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
5 prejudice based on Wallace's failure to file an amended complaint in compliance with this
6 Court's August 9, 2022, order. The Clerk of Court is directed to enter judgment
7 accordingly and close this case. No other documents may be filed in this now-closed
8 case. If Wallace wishes to pursue his claims, he must file a complaint in a new case.

9 It is further ordered that the application to proceed *in forma pauperis* without having
10 to prepay the filing fee (ECF No. 4) is granted. Wallace need not pay an initial installment
11 fee, prepay fees or costs, or provide security for fees or costs, but he is still required to
12 pay the full \$350 filing fee under 28 U.S.C. § 1915, as amended. This full filing fee remains
13 due and owing even though this case is being dismissed.

14 In order to ensure that Wallace pays that filing fee, it is further ordered that the
15 Nevada Department of Corrections must forward payments from the account of **Marvin**
16 **Wallace, #1075552** to the Clerk of the United States District Court, District of Nevada,
17 20% of the preceding month's deposits (in months that the account exceeds \$10.00) until
18 the full \$350 filing fee has been paid for this action. The Clerk is directed to SEND copies
19 of this order to the Finance Division of the Clerk's Office and to the attention of **Chief of**
20 **Inmate Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson
21 City, NV 89702.

22 DATED THIS 16th Day of September 2022.



24
25 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE